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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,608	06/28/2006	Axel Oberschelp	B&B-138	3342
909 7590 03/17/2009 PILLSBURY WINTHROP SHAW PITTMAN, LLP P.O. BOX 10500 MCLEAN, VA 22102				
EXAMINER				
JUSKA, CHERYL ANN				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/563,608

Applicant(s)

OBERSCHLIP, AXEL

Examiner

Cheryl Juska

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 6, 10, 13, and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Regarding claim 6, the phrase “such as” renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).
4. Claim 6 is also rejected for the use of the phrase “fabric consists of the principal components cellulose fibers and kapok fibers.” The claim is indefinite because the transitional phrase “consists of” is closed language which limits the fabric to only cellulose and kapok fibers, while the phrase “the principal components” opens up the claimed fabric to include fibers other than cellulose and kapok fibers. If applicant intends to limit the fabric to the former embodiment, then claim 11, which adds polyester fibers to the fabric, is broader in scope than its parent claim. As such, for the examination purposes, the claim is interpreted as reading “fabric *comprising* the principal components cellulose fibers and kapok fibers.”
5. Claim 10 is indefinite because the scope of the term “climate fabric” is unclear. The term is not conventional in the art and the specification has not clearly defined the term.

6. Claim 13 is indefinite because while it depends from claim 6, which is drawn to a mixed fiber nonwoven or woven fabric, claim 13 is drawn to an antibacterial, house dust mite free and moisture balancing mixed fiber or woven fabric, which is recited in independent claim 12 rather than claim 6. Claim 15 is similarly rejected.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 6 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by GB 556,045 issued to Taylor.

Taylor discloses a felted (i.e., nonwoven) fabric comprising kapok fibers blended with wool, cotton (i.e., cellulose), or other natural vegetable fiber or artificial fibers (page 1, lines 46-54 and page 2, lines 97-105). Thus, claim 6 is clearly anticipated by the cited Taylor reference.

Regarding claim 10, it is asserted that the limitation of the fabric being a “climate fabric” is descriptive of intended use and, as such, is not necessarily given patentable weight at this time. Hence, claim 10 is rejected along with claim 6. In the alternative, the “climate fabric” recitation is interpreted as limiting the fabric to having thermal insulation properties. In this event, it is noted that Taylor teaches the kapok blend fabric has good thermal insulation properties (page 2, lines 11-45). Thus, claim 10 is also anticipated by the cited Taylor reference.

9. Claims 6, 10, 11, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 91-02041 issued to Iwamoto.

Iwamoto discloses a nonwoven fabric comprising a blend of kapok fibers, bast fibers, such as jute (i.e., cellulosic), and thermal bonding fibers, such a polyester (abstract). Thus, Iwamoto clearly anticipates claims 6, 11, and 15.

Regarding claim 10, it is asserted that the limitation of the fabric being a “climate fabric” is descriptive of intended use and, as such, is not necessarily given patentable weight at this time. Hence, claim 10 is rejected along with claim 6. In the alternative, the “climate fabric” recitation is interpreted as limiting the fabric to having thermal insulation properties. In this event, it is argued that like materials cannot have mutually exclusive properties. In other words, claim 10 is anticipated since the insulation properties claimed are inherent to the disclosed Iwamoto fabric.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 7-9 and 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Taylor reference.

While Taylor fails to explicitly teach the use of chemically manufactured or regenerated cellulosic fibers, the inclusion of said fibers in the Taylor invention would have been obvious to one of ordinary skill in the art. In particular, regenerated cellulosic fibers or rayon fibers made

by a solvent spinning process, including lyocell fibers, are well known in the art as having properties similar to cotton, linen, or ramie. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. As such, it would have been obvious to substitute lyocell fibers for the cotton fiber, other vegetable fibers, or synthetic fibers of the Taylor invention. Absent a showing of unexpected results, such a substitution would have yielded predictable results to a skilled artisan. Therefore, claims 7-9 are rejected as being obvious over the prior art.

Regarding claims 12-14, while Taylor fails to teach the fabric has antibacterial and moisture balancing properties and is dust mite free, the claims are also rejected as being obvious over the prior art. Specifically, like materials cannot have mutually exclusive properties. In other words, claims 12-14 are rejected since the recited properties claimed are inherent to the disclosed kapok fiber blend.

With respect to claims 11 and 15, it would have also been obvious to employ polyester fibers for the artificial fibers taught by Taylor. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. Absent a showing of unexpected results, such a selection of polyester fibers would have yielded predictable results to a skilled artisan. Therefore, claims 11 and 15 are rejected as being obvious over the prior art.

12. In the alternative, claims 11 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Taylor reference in view of the cited Iwamoto reference.

While Taylor fails to teach the addition of polyester fibers, it would have been obvious to a skilled artisan to incorporate thermoplastic fibers, such as the polyester fibers taught by

Iwamoto, in order to enable thermal bonding of the nonwoven. Motivation to do so would be to enhance the strength properties of the nonwoven. Therefore, claims 11 and 15 are rejected over the cited prior art.

Conclusion

13. The art made of record and not relied upon is considered pertinent to applicant's disclosure.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached at 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

15. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Cheryl Juska/
Primary Examiner
Art Unit 1794